H.R. 3881, TO AMEND THE MINERAL LEASING ACT TO REPEAL PROVISIONS RELATING ONLY TO THE ALLEGHENY NATIONAL FOREST, "COOPERATIVE MANAGEMENT OF MINERAL RIGHTS ACT OF 2015"

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

Tuesday, April 19, 2016

Serial No. 114–38

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.fdsys.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

99–890 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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Tuesday, April 19, 2016
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 2:19 p.m., in room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Thompson, Gosar, Hice, Hardy; Lowenthal, and Costa.

Mr. LAMBORN. The Subcommittee on Energy and Mineral Resources will come to order. We are here today to hear H.R. 3881, introduced by Representative Glenn Thompson of Pennsylvania, to amend the Mineral Leasing Act to repeal provisions relating only to the Allegheny National Forest, the "Cooperative Management of Mineral Rights Act of 2015."

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member, and the Vice Chair and a designee of the Ranking Member. This will allow us to hear from our witnesses sooner and help Members keep to their schedules.

Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered. I now recognize myself for my opening statement.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. This afternoon's hearing is on H.R. 3881, introduced by my colleague from Pennsylvania, Representative Glenn Thompson. This legislation addresses the U.S. Forest Service's long-standing attempt to usurp regulatory jurisdiction over private property rights in Northwestern Pennsylvania and the Allegheny National Forest.

Production of oil and natural gas in the Allegheny region has been occurring for over a century. In fact, long before Edwin Drake mechanically drilled the first commercial oil well in Titusville, Pennsylvania in 1859, Native Americans in the region skimmed

crude oil from natural seepage and used it for medicinal purposes. While the Drake well sparked the first oil boom in the United States, the dawn of horizontal drilling, paired with the age-old method of hydraulic fracturing, led to the most recent boom in the Marcellus Shale.

In less than a decade, Pennsylvania has become the second largest producer of natural gas in the United States, behind Texas, and has contributed toward our Nation's renewed status in leading global production of energy. Unfortunately, the Commonwealth of Pennsylvania's success also put it directly in the crosshairs of environmental activists focused on banning American energy production in this region and elsewhere.

All of the land that the Allegheny National Forest sits on was once privately owned. When the Federal Government acquired the land to establish a new national forest in 1923, most of the acquisition was of surface rights, with most of the subsurface mineral rights remaining in private ownership. Today, 93 percent of the subsurface mineral estate in the Allegheny National Forest is in private hands and is regulated under state law.

For decades, the Forest Service worked cooperatively with the state and energy producers in accordance with Federal and state laws. Yet in 2007, the Forest Service changed the game, eventually proposing new rules to apply NEPA to private mineral rights. Soon after, a sweetheart "sue-and-settle" deal occurred in which the Forest Service settled with Sierra Club and other environmental groups, agreeing to apply a multitude of new Federal regulations on these private mineral rights.

As a result of the settlement, the Forest Service also enacted an outright ban on future oil and natural gas development in the Allegheny until new regulations were finalized. Thankfully, Federal courts eventually struck down this regulatory over-reach, but not without a very real cost to many families and businesses in the Allegheny region.

Given the vast regulatory over-reach we have seen under this Administration, it is clear that the need to further rein in the Forest Service is very necessary. The way the Forest Service sought to trample upon the rights of private property owners and state jurisdiction in this instance is a cautionary tale for every single parcel of land managed by the Federal Government.

My colleague's legislation should be a model for eliminating statutory language that provides enough leeway for Federal agencies to run roughshod over private property rights. This bill will also help prevent the Forest Service from manipulating our broken regulatory system in the future to prevent the development of affordable energy upon which American families and businesses currently rely.

In his book, "The Prize," Daniel Yergin includes a quote from the mid-19th century on the virtues of Pennsylvania's newfound oil resources: "It is the light of the age . . . the brightest, and yet the cheapest in the world; a light fit for Kings and Royalists, and not unsuitable for Republicans and Democrats." I would say this statement still holds true. The safe and responsible development of American energy throughout our Nation enjoys support from

responsible members of both the Republican and Democratic parties, from Pennsylvania to Texas, to the shores of California.

These resources will remain a fundamentally important energy source for American families, manufacturers, and businesses far into the future. The current regulatory environment is making it increasingly difficult and extremely costly to produce this much-needed energy in our Nation. In this instance, I am glad that the courts were able to prevent such over-reach from shutting down energy production on the Marcellus. Unfortunately, other areas of our country have not been so lucky.

With that, I look forward to hearing the testimony from our witnesses.

[The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMBORN, CHAIRMAN, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

This afternoon's hearing is on H.R. 3881, the "Cooperative Management of Mineral Rights Act," introduced by my colleague from Pennsylvania, Representative Glenn Thompson. This legislation addresses the U.S. Forest Service's long-standing attempt to usurp regulatory jurisdiction over private property rights in Northwestern Pennsylvania in the Allegheny National Forest.

Production of oil and natural gas in the Allegheny region has been occurring for over a century. In fact, long before Edwin Drake mechanically drilled the first commercial oil well in Titusville, Pennsylvania in 1859, Native Americans in the region skimmed crude oil from natural seepage and used it for medicinal purposes. While the Drake well sparked the first oil boom in the United States, the dawn of horizontal drilling, paired with the age-old method of hydraulic fracturing, led to the most recent boom in the Marcellus Shale.

In less than a decade, Pennsylvania has become the second largest producer of natural gas in the United States behind Texas—and has contributed toward our Nation's renewed status in leading global production. Unfortunately, the Commonwealth of Pennsylvania's success also put it directly in the crosshairs of environmental activists focused on banning American energy production in this region and elsewhere.

All of the land that the Allegheny National Forest sits on was once privately owned. When the Federal Government acquired the land to establish a new National Forest in 1923, most of the acquisition was of surface rights—with most of the subsurface mineral rights remaining in private ownership. Today, 93 percent of the subsurface mineral estate in the Allegheny National Forest is in private hands, and is regulated under state law. For decades the Forest Service worked cooperatively with the state and energy producers in accordance with Federal and state laws. Yet in 2007, the Forest Service changed the game—eventually proposing new rules to apply the National Environmental Policy Act (NEPA) to private mineral rights.

Soon after, a sweetheart "sue and settle" deal occurred in which the Forest Service settled with Sierra Club and other environmental groups, agreeing to apply a multitude of new Federal regulations on these private mineral rights. As a result of the settlement, the Forest Service also enacted an outright ban on future oil and natural gas development in the Allegheny until new regulations were finalized.

Thankfully, Federal courts eventually struck down this regulatory over-reach, but not without a very real cost to many families and businesses in the Allegheny region. Given the vast regulatory over-reach we have seen under this Administration, it is clear that need to further rein in the Forest Service is very necessary. The way the Forest Service sought to trample upon the rights of private property owners and state jurisdiction in this instance is a cautionary tale for every single parcel of land managed by the Federal Government.

My colleague's legislation should be a model for eliminating statutory language that provides enough leeway for Federal agencies to run roughshod over private property rights. This bill will also help prevent the Forest Service from manipulating our broken regulatory system in the future to prevent the development of affordable energy upon which American families and businesses currently rely.

In his book "The Prize," Daniel Yergin includes a quote from the mid-19th century on the virtues of Pennsylvania's newfound oil resources: "It is the light of the age

. . . the brightest and yet the cheapest in the world; a light fit for Kings and Royalists and not unsuitable for Republicans and Democrats."

I would say this statement still holds true. The safe and responsible development of American energy throughout our Nation enjoys support from both Republicans and Democrats, from Pennsylvania, to Texas, to the shores of California. These resources will remain a fundamentally important energy source for American families, manufacturers and businesses far into our future. The current regulatory environment is making it increasingly difficult and extremely costly to produce this much-needed energy in our Nation. In this instance I am glad that the courts were able to prevent such over-reach from shutting down energy production on the Marcellus. Unfortunately, other areas of our country have not been so lucky.

With that, I look forward to hearing the testimony from our witnesses.

Mr. LAMBORN. I now recognize the Ranking Minority Member for a statement.

STATEMENT OF THE HON. ALAN S. LOWENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Dr. LOWENTHAL. Thank you very much, Mr. Chairman. I have some very significant concerns about the legislation before us today. I understand the sponsor's interest in trying to protect private oil and gas rights, and I certainly respect those rights. But I also respect the rights of surface landowners, who in this case are the American people. And we certainly should not be stripping away those rights just to make it a little easier for oil and gas companies.

Unfortunately, that appears to be all that this bill is about. This issue started back in 1979, when the forest rangers at the Allegheny National Forest discovered that an oil company was building roads and drilling in the Allegheny without having provided any notice whatsoever. Worse, they were drilling on land that was being managed for hunting, fishing, and wildlife habitat. The Forest Service had no opportunity to make sure that the forest resources were not damaged unnecessarily in the process of drilling.

The Forest Service also was unable to properly market the timber that the oil company cut down to build the roads and the well pad. So, the Forest Service sued the company and won. The ruling required the oil company to provide information to the Forest Service at least 60 days before doing any additional drilling.

Those requirements became standard operating procedure for the Forest Service in the 1980s, and were put into law by the Energy Policy Act of 1992. It is that language that this bill would eliminate.

This bill is unnecessary, since the courts have been very clear that the Forest Service deserves this advance notice. And I am concerned that future courts could interpret this legislation to indicate that it is the intent of Congress that companies do not have to provide any advance notice. Then those companies would be allowed to build roads and drill wells without telling anyone in charge of protecting the forest.

This could go far beyond the Allegheny, too, since it could set a precedent that would apply to all private minerals underneath national forests, nationwide. I do not see why it is necessary to take that kind of risk, particularly when recent court cases have

severely limited the authority of the Forest Service in these situations.

According to the courts, the Forest Service cannot say no to companies wanting to drill on their private mineral rights. I disagree, but that is not the point we are discussing here today. The point is, the oil companies won, so there is no need for legislation that supposedly protects their interests. The courts have done it for them, and there is no indication that the 60-day notice has hindered companies very much, if at all.

But the courts have also been very clear that the Forest Service deserves this advance notice and it deserves the right to make sure that our national forests are not being unduly harmed by private companies seeking to drill for oil and gas. The Forest Service is managing this land on behalf of the American people, and the American people have the right to use this land for recreation, hunting, fishing, bird watching, and more, and have the right to expect they will be able to continue to do so with their children and their grandchildren.

This bill appears to simply blindfold the Forest Service to what is happening on their lands, and I think that is the wrong direction to go.

Thank you, Mr. Chair, and I yield back the balance of my time.

[The prepared statement of Mr. Lowenthal follows:]

PREPARED STATEMENT OF THE HON. ALAN S. LOWENTHAL, RANKING MEMBER, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mr. Chairman, I have some significant concerns about the legislation before us today.

I understand the sponsor's interest in trying to protect private oil and gas rights, and I certainly respect those rights. But I also respect the rights of surface landowners, who in this case are the American people, and we certainly shouldn't start stripping away those rights just to make things a little easier for oil and gas companies.

Unfortunately, that appears to be all that this bill does.

This issue started back in 1979, when the forest rangers at the Allegheny National Forest discovered that an oil company was building roads and drilling in the Allegheny without having provided any notice whatsoever. Worse, they were drilling on land that was being managed for hunting, fishing, and wildlife habitat.

The Forest Service had no opportunity to make sure that forest resources were not damaged unnecessarily in the process of drilling. The Forest Service also was unable to properly market the timber that the oil company cut down to build the roads and well pad.

So the Forest Service sued the company and won. The ruling required the oil company to provide information to the Forest Service at least 60 days before doing any additional drilling. Those requirements became standard operating procedure for the Forest Service in the early 1980s, and were put into law by the Energy Policy Act of 1992. It is that language that this bill would eliminate.

This bill is unnecessary since the courts have been very clear that the Forest Service deserves this advance notice. And I am concerned that future courts could interpret this legislation to indicate that it is the intent of Congress that companies don't have to provide any advance notice. And then those companies would be allowed to build roads and drill wells without telling anyone in charge of protecting the forest.

This could go far beyond the Allegheny, too, since it could set a precedent that would apply to all private minerals underneath National Forests nationwide. I don't see why it's necessary to take that kind of risk. Particularly when recent court cases have severely limited the authority of the Forest Service in these situations.

According to the courts, the Forest Service can't say no to companies wanting to drill on their private mineral rights. I disagree, but that's not the point we're discussing today. The point is, the oil companies won. So there's no need for legislation that supposedly protects their interests—the courts have done it for them. And

there's been no indication that the 60-day notice has hindered companies very much if at all.

But the courts have also been very clear that the Forest Service deserves this advance notice, and it deserves the right to make sure that our national forests are not being unduly harmed by private companies seeking to drill for oil and gas. Because the Forest Service is managing this land on behalf of the American people, and the American people have the right to use this land for recreation, hunting, fishing, bird watching, and more, and have the right to expect that they will be able to continue to do so with their children and their grandchildren.

This bill appears to simply blindfold the Forest Service to what is happening on their lands, and I think that's the wrong direction to go. I yield back the balance of my time.

Mr. LAMBORN. Thank you.

The Chair now recognizes the author of H.R. 3881, Representative Thompson, for a brief statement about the bill.

STATEMENT OF THE HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. THOMPSON. Thank you, Chairman. Thank you to the Ranking Member and my colleagues. Thank you for your attendance this afternoon.

The underlying issue that this Cooperative Management of Mineral Rights Act aims to address is central to the management of the Allegheny National Forest and the economy of the region. But also, this legislation has a profound implication to how we manage issues of access, nationally.

At its fundamental core, this legislation is about private property rights, not about oil—private property rights and fair access. As we discuss this legislation and the events leading up to it, it is critical to keep the history of the region in context.

Since coming to Congress in 2009, I have had the distinct privilege to represent both the Allegheny National Forest and Pennsylvania's oil region. Because of this area's remarkable history, the region was designated as a National Park Service Heritage Area, and is frequently referred to as—and I quote—"The Valley That Changed the World."

In 1859, in Titusville, Pennsylvania, Col. Edwin Drake came to the area in search of petroleum, intending to corner the market for medicinal products. Drake discovered much more than a medicinal tonic. Over the following decades the oil industry developed, fueling manufacturing, exports, and generations of innovation.

Following the first American oil boom, in 1923 the Allegheny National Forest was established in four counties: Warren, Forest, Elk, and McKean. Because of the long history of oil and timbering within the region, the Federal Government chose to only purchase the surface rights within the Allegheny. This was done as an agreement between the landowners, the municipalities, and the Federal Government, my predecessors, to ensure industry could continue to produce privately sourced commodities, while the area could simultaneously function as a national forest.

And I have to say, if you have not been to the Allegheny National Forest, please come. You will see this works really well. There is not a problem, and what the Forest Service chose to do in cooperation with some environmental groups with a solution in search of

a problem that the courts have deemed and reinforced as being inappropriate.

To this day, 93 percent of the mineral rights in the Allegheny are owned by the private sector. Unfortunately, the national forests are commonly mistaken for national parks. One might believe that the Forest Service would have this understanding, but I feel that we should be reminded of the mission presented by our first chief of the Forest Service, and former Pennsylvania Governor, Gifford Pinchot. The mission of the Forest Service is one of multiple uses and active management. This includes timbering, conservation, research, energy production, watershed management, and recreation.

In short, active management of these lands and responsible utilization of their resources is the core function of the Forest Service.

Since 1923, the Forest Service and local interests largely operated harmoniously in order to meet the various needs of the local communities and the economy, supplementing national demand for resources. However, the Forest Service attempted to fundamentally change this long-standing relationship as they settled out of court to apply the National Environmental Policy Act, or NEPA, to the oil and gas leasing process.

In January 2009, the Forest Service stopped issuing notices to proceed, effectively shutting down access to private property within the Allegheny. Subsequently, a Federal judge overturned the settlement, citing the Forest Service's lack of authority to further regulate privately held mineral rights within the Allegheny National Forest. With due respect to the Ranking Member, you cannot strip away something that the government never had.

Further, the courts found that the Federal Government is required to provide "reasonable access" to private property.

Mr. Chairman, the real-life consequences of the Forest Service's settlement produced a de facto moratorium on energy production in the Allegheny, affecting industry and the regional economy. Throughout this period, the Forest Service referred to an obscure provision contained in the Energy Policy Act of 1992, in order to justify the need for a new Federal regulatory process in the Allegheny National Forest.

For 16 years, the Forest Service did not promulgate a new rule, because they simply were not needed. Oil and gas extraction had been effectively regulated by the Commonwealth of Pennsylvania. In light of the court's decision, which again, ruled squarely in favor of the mineral rights owners, the private property owners, the existing 1992 statute remains on the book.

To address this matter, I have introduced H.R. 3881, the Cooperative Management of Mineral Rights Act. This legislation repeals the 1992 language which applies solely to the Allegheny National Forest. This would effectively codify the findings of the court, which remain consistent with more than 90 years of precedent. Property rights are, of course, among the founding principles of this great Nation. In fact, I think it is one of those that defines us as a Nation. And this is not a new concept. Case law shows us that access to private property cannot be unreasonably hindered, not even by the Federal Government.

Today the committee will hear from a panel of individuals who were party to the case in question. We will hear firsthand how the

Forest Service's actions caused harm to my constituents; how it utilized, foolishly, probably more than $4 million that could have been used for healthy forest management, for multiple uses on the forest; and how it caused harm to the rural economy and communities of Northwestern Pennsylvania.

It is my hope that the committee's takeaway will be how these actions could have similar effects upon their communities if Federal actions were replicated across the country.

I look forward to the witnesses and look forward to their testimony. Thank you, Chairman.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF THE HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Chairman Lamborn, Ranking Member Lowenthal, and colleagues, thank you for your attendance this afternoon. The underlying issue this Cooperative Management of Mineral Rights Act aims to address is central to the management of the Allegheny National Forest and the economy of the region. But also, this legislation has a profound implication to how we manage issues of access nationally. At its fundamental core, this legislation is about private property rights and fair access.

As we discuss this legislation and the events leading up to its need, it is critical to keep the history of the region in context. Since coming to Congress in 2009, I have had the distinct privilege to represent both the Allegheny National Forest and Pennsylvania's Oil Region. Because of this area's remarkable history, the region was designated as a National Park Service Heritage Area and is frequently referred to as "the valley that changed the world."

It was 1859 when "Colonel" Edwin Drake came to the area in search of petroleum, intending to corner the market for medicinal products. In Titusville, Pennsylvania, Drake discovered much more than a medicinal tonic. Over the following decades the oil industry developed, fueling manufacturing, exports, and generations of innovation.

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Today, the committee will hear from a panel of individuals who were party to the case in question. We will hear firsthand, how the Forest Service's actions caused harm to my constituents, the rural economy, and communities of Northwestern Pennsylvania. It is my hope the committee will take away how these actions could have similar effects upon their communities, if Federal actions were replicated across the country.

I welcome the witnesses and look forward to their testimony.

Mr. LAMBORN. Thank you. Now I will introduce our witnesses, and they are Mr. Mark Cline, President of the Pennsylvania Independent Petroleum Producers Association; Mr. Bud Shuffstall, National Association of Royalty Owners; Mr. Glenn Casamassa, Association Deputy Chief of the National Forest System at the U.S. Forest Service; Mr. Jim Furnish, former Deputy Chief of the U.S. Forest Service; and Mr. Craig Mayer, Secretary of the Pennsylvania Independent Oil & Gas Association.

Let me remind the witnesses that under our Committee Rules they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

When you begin, the lights on the witness table will turn green. After 4 minutes, the yellow light will come on. Your time will have expired when the red light comes on, and I will ask you to complete your statement at that time.

The Chair now recognizes Mr. Cline to testify.

STATEMENT OF MARK CLINE, PRESIDENT, PENNSYLVANIA INDEPENDENT PETROLEUM PRODUCERS ASSOCIATION, INC., BRADFORD, PENNSYLVANIA

Mr. CLINE. Chairman and committee members, thank you for the invitation to come here today and testify about H.R. 3881. My name is Mark Cline, and I am the President of the Pennsylvania Independent Petroleum Producers, and a member of the Pennsylvania Conventional Oil and Gas Advisory Committee.

As you are all aware, the National Forest System was designed to manage the natural resources, recreation, grazing, wildlife, fish, and more. The Allegheny National Forest is unique with its vast oil and gas minerals lying beneath it and 93 percent of those rights belonging to private citizens. There were wells already drilled on the property before the Forest Service took over.

At the present time, there are approximately 12,000 oil and gas wells in the Allegheny National Forest. The industry figures around half of those 12,000 wells were hydraulically fracked. A recent study concluded that, despite the long history of conventional

well development in the region, the ANF's streams, trees, and other natural resources have prospered. The study states, "Despite the tens of thousands of conventional oil and gas wells in operation in the region, a full 72 percent of the 2,126 miles of mapped streams in the ANF are rated as high value or exceptional value for water quality."

The first Chief of the Forest Service, Gifford Pinchot, said, and I quote, "National Forest land is managed to provide the greatest amount of good for the greatest amount of people in the long run."

Now, you are probably thinking that only oil and gas operators are the ones benefiting from the use of the minerals under the forest. That thought is completely wrong. The story from Northwestern Pennsylvania is our Penn Grade Crude Oil, which, by the way, is the best lubricating oil in the world, played a huge part in both World Wars.

It was used exclusively in the engines that ran the trucks and equipment in the first war. The second war, it played a much bigger part as airplanes became so important. They say if you would ask an Army/Air Force mechanic from World War II, he would tell you they only used oil from Pennsylvania. It helped the planes fly more missions without having engine problems. It was used by the Army in their trucks and tanks which supported the soldiers. The same can be said about the Korea and Vietnam Wars. Fifteen to twenty percent of that oil came directly from the Allegheny National Forest. I think Gifford Pinchot would say that the oil was used for the greatest amount of good for the greatest amount of people.

People still benefit every day from the oil and gas. Natural gas is used for heating homes, buildings, hospitals, and schools. It is used to generate electricity. It fuels vehicles, heats water, bakes food, powers industrial furnaces, and even powers air conditioners. Our paraffin-based crude oil is turned into over 6,000 different products. Without crude oil, this country would come to a complete standstill. From the time you wake up in the morning from the sound of your alarm clock, take a shower, eat breakfast, and get into your car, you have already used over 40 products made from crude oil. So don't you ever think or let someone tell you that we are the only ones benefiting from the minerals under the ANF.

The industry has spent vast amounts of money defending our rights to produce in the ANF. These rights were given to us years ago and have been upheld by the courts. This bill would protect those rights. Please vote to approve this bill.

Thank you for your time and the opportunity to be here today.

[The prepared statement of Mr. Cline follows:]

PREPARED STATEMENT OF MARK L. CLINE, PRESIDENT, PENNSYLVANIA INDEPENDENT PETROLEUM PRODUCERS ASSOCIATION, INC., BRADFORD, PENNSYLVANIA

Chairman and committee members, thank you for the invitation to come here today and testify about H.R. 3881. As you are all aware, the National Forest system was designed to manage the natural resources, recreation, grazing wildlife, fish and more.

The Allegheny National Forest is unique with its vast oil and gas minerals lying beneath it and 93 percent of those rights belonging to private citizens. There were wells already drilled on the property before the Forest Service took over. At the present time there are approximately 12,000 oil and gas wells in the Allegheny National Forest. The Industry figures around half of those 12,000 wells were

Hydraulically Fracked. A recent study concluded that despite the long history of conventional well development in the region, the ANF's streams, trees and other natural resources have prospered. The study states despite the tens of thousands of conventional oil and gas wells in operation in the region, a full 72 percent of the 2,126 miles of mapped streams in the ANF were rated as high value or exceptional value for water quality.

The first Chief of the Forest Service, Gifford Pinchot said and I quote "National Forest Land is managed to provide the greatest amount of good for the greatest amount of people in the long run." Now you are probably thinking that only the oil and gas operators are the ones benefiting from the use of the minerals under the Forest. That thought is completely wrong. The story from Northwestern Pennsylvania is our Penn Grade Crude oil, which by the way is the best lubricating oil in the world, played a huge part in both World Wars. It was used exclusively in the engines that ran the trucks and equipment in the first war. The second war it played a much bigger part as airplanes became so important. They say if you would ask an Army Air Force mechanic from World War II, he would tell you they only used oil from Pennsylvania. It helped the planes fly more mission without having engine problems. It was used by the Army in their trucks and tanks which supported the soldiers. The same can be said about the Korea and the Vietnam Wars, 15 to 20 percent of that oil came from the Allegheny National Forest. I think Gifford Pinchot would say "that the oil was used for the greatest amount of good for the greatest amount of people."

People still benefit every day from the oil and gas. Natural gas is used for heating homes, buildings, hospitals and schools. It is used to generate electricity, it fuels vehicles, heats water, bakes food, powers industrial furnaces, and even powers air conditioners.

Our paraffin based crude oil is turned into over 6,000 different products. Without crude oil this country would come to a complete standstill. From the time you wake up in the morning from the sound of your alarm clock, take a shower, eat breakfast and get into your car you have already used over 40 products made from crude oil. So don't you ever think or let someone tell you we are the only ones benefiting from the minerals under the ANF.

The Industry has spent vast amounts of money defending our rights to produce in the ANF. These rights were given to us years ago and have been upheld by the Courts. This Bill will protect those rights. Please vote to approve this Bill.

Thank you for your time and the opportunity to be here today.

Mr. LAMBORN. Thank you.

The Chair now recognizes Mr. Shuffstall to testify.

STATEMENT OF DEARALD "BUD" SHUFFSTALL, NATIONAL ASSOCIATION OF ROYALTY OWNERS, MEADVILLE, PENNSYLVANIA

Mr. SHUFFSTALL. Chairman Lamborn, Ranking Member Lowenthal, members of the committee, it is an honor to speak with you today regarding this important issue. Thank you for the invitation. I am Bud Shuffstall. I am from Meadville, Pennsylvania. I work for Northwest Bank, which is headquartered in Warren, Pennsylvania, which also happens to be the headquarters of the Allegheny National Forest.

Like many of our customers and bank staff, personally I am a regular visitor to the ANF, and we value and appreciate it deeply. But I am here today as a member of NARO, the National Association of Royalty Owners.

NARO has members in all 50 states and educates and advocates for the rights of an estimated 8.5 to 12 million citizens who receive royalty income from the production of their private property, specifically from production of their oil, natural gas, and minerals. The average NARO member is 60 years old, a widow, and makes less than $500 per month in royalty income.

We are very pleased to address the committee on the issue of development of private or severed oil, gas, and mineral interests underlying the national forests, as the protection of these private property rights in all 50 states is paramount to millions of private mineral owners.

Of all the wells ever drilled in the world, the vast majority have been drilled in the United States. Why? Because we are a Nation that values the private ownership of oil, gas, and minerals. We value and encourage risk in the pursuit of profit. The United States is the only former British colony that, upon achieving independence, awarded the ownership of the minerals to private citizens instead of to the state. This uniquely American model was actually suggested by Thomas Jefferson. His concept has helped make us a strong Nation and today is enabling America's rise to become the world's dominant energy producer.

As noted previously, the ANF does lie in the heart of Pennsylvania's oil and gas region. Its headquarters is roughly 40 miles from the site of Drake's well in Titusville, Pennsylvania. Some of the earliest severances of these property rights, the oil and gas interests underlying the earth, occurred under land that was to become the Allegheny National Forest, or very near to it.

As previously noted, the ANF was created pursuant to the Weeks Act of 1911. In 1923, the Federal Government purchased only the surface estate, even though the Weeks Act authorized the acquisition of subsurface rights, including mineral rights. The Federal Government chose not to acquire those rights, as they were at the time too valuable and presumably cost-prohibitive to acquire. In doing so, the Federal Government took title to the surface only, and subject to the rights of all prior exceptions and reservations of subsurface oil and gas rights.

In many cases, those oil and gas rights underlying the ANF had long been severed before the creation of the ANF. It is a well established point of law in all jurisdictions of the United States, including Pennsylvania, that the private property rights of the subsurface estate are dominant over the rights of the surface estate. The law's recognition of the subsurface interest as dominant has been found to be essential, lest it be subrogated to any other property rights, thereby risking its devaluation.

Absent a taking by the government of those subsurface property rights, this legal principle precludes the Federal Government, as surface estate owner of the ANF, from interfering with the development of private subsurface rights.

Subject to state and Federal law, of course, the subsurface rights owners have the legal authority, therefore, to develop their private oil and gas reserves. It is this group that NARO represents. NARO members have a dominant legal authority to access and develop their private subsurface interests. The Forest Service may not unreasonably restrict access to that estate in a way that makes the development thereof uneconomic or unprofitable.

The government must be held to a reasonable set of regulatory management controls that does not unduly burden those private oil, gas, or mineral owners. For example, an excessive fee structure for access onto, or across, Federal lands will negatively affect the

value of the subsurface estate and the economic viability of that estate.

Finally, the third tenet that should be addressed here is that the government may not unreasonably restrict oil and gas development to the point of requiring a "no net impact" from an environmental standpoint as it seeks to mitigate surface impacts. The government may not improperly elevate environmental concerns over other appropriate considerations, or seek to create a set of regulations that restricts or eliminates all environmental impacts on the subject lands.

Any environmental analysis must also include the economic impacts to the orderly development of oil and gas within the forest. This includes a socioeconomic analysis that details the negative impacts any restrictions will have on state and private subsurface development and the impacts to local and state economies and taxes.

In conclusion, we wish to emphasize that the government must recognize the rights of the subsurface interests and their dominance of those rights over the surface interests.

Thank you for your time.

[The prepared statement of Mr. Shuffstall follows:]

PREPARED STATEMENT OF DEARALD "BUD" W. SHUFFSTALL, II, NATIONAL ASSOCIATION OF ROYALTY OWNERS, MEADVILLE, PENNSYLVANIA

Chairman Lamborn, Ranking Member Lowenthal, members of the committee, it's an honor to speak with you today regarding this important issue. Thank you for the invitation.

I am Bud Shuffstall from Meadville, Pennsylvania. I work for Northwest Bank, headquartered in the same city as the Allegheny National Forest's headquarters (Warren, PA). Like many of our customers and bank staff, I am a regular visitor to the Allegheny National Forest and value and appreciate it deeply.

I speak today as a member of the National Association of Royalty Owners (NARO). NARO has members in all 50 states and educates and advocates for the rights of an estimated 8.5 to 12 million citizens who receive royalty income from the production of their private property—specifically from production of their oil, natural gas and minerals.

The average NARO member is 60 years old, a widow and makes less than $500 per month in royalty income. About 70 percent of the mineral estate in the lower 48 states is owned by individual citizens. In 2012, Montana State University conducted a study that estimated roughly 77 percent of oil and 81 percent of natural gas produced onshore was produced on private property. NARO is pleased to address this committee on the issue of development of private (severed) oil, gas and mineral interests that underlie the Allegheny National Forest, as the protection of our private property rights in all 50 states is paramount to millions of private mineral owners.

Of all the wells ever drilled around the world, the vast majority have been drilled in the United States—a Nation that values private ownership of oil, gas and minerals and that also encourages both risk and the pursuit of profit. The United States is the only former colony that, upon achieving independence, awarded the ownership of minerals to private citizens instead of to the state. This uniquely American model was suggested by Thomas Jefferson. His concept has helped make us a strong Nation and it today is enabling America's rise to become the world's dominant energy producer.

The Allegheny National Forest lies in the heart of Pennsylvania's oil and gas region. It is only 40 miles (64 km) from the site of the first commercial oil well in the United States at Titusville, Pennsylvania. Indeed, some of the earliest severances of subsurface oil and gas rights occurred in the late 1850s and early 1860s near or upon land that would eventually become part of the Allegheny National Forest.

The Allegheny National Forest was created pursuant to the provisions of the Weeks Act of 1911. In 1923 the Federal Government purchased only the surface estate in what was to become the Allegheny National Forest (the subsurface rights being too valuable and cost prohibitive to acquire at the time). In doing so the

Federal Government took title to the surface only, and subject to the rights of all prior exceptions and reservations of subsurface oil and gas rights. In many cases the oil and gas rights underlying the property had been long severed from the surface before the creation of the Allegheny National Forest.

It is a well-established point of law in all jurisdictions of the United States, including Pennsylvania, that the rights of the subsurface estate are dominant over the rights of the surface estate. The law's recognition of the subsurface estate as dominant has been found to be essential, lest it be subrogated to any other property rights thereby risking its devaluation. Absent a taking by the government of subsurface property rights, this legal principle precludes the Federal Government as surface estate owner of the Allegheny National Forest from interfering with the development of those subsurface property rights still owned by others.

Existing Forest Service regulations recognize this fact and maintain that Service operations should not be "applied so as to contravene or nullify rights vested in holders of mineral interests on refuge lands." 50 C.F.R. § 29.32. The Service's manual states that it must "[p]rovide for the exercise of non-Federal oil and gas rights while protecting [USFWS] resources to the maximum extent possible." 612 FWS Manual 2.4.B.

Subject to state and Federal law, the subsurface rights owners have the legal authority to develop oil and gas reserves. It is this group of people that NARO represents. Just as the Forest Service has the authority to manage the public surface estate, NARO members have a dominant legal authority to access and develop their private subsurface estate. Also, the Forest Service may not unreasonably restrict access to the subsurface estate in a way that makes the development thereof uneconomic or unprofitable.

Courts have held that Federal agencies cannot impose stipulations or conditions of approval (COAs) that violate this tenet. See *Utah v. Andrus*, 486 F. Supp. 995, 1011 (D. Utah 1979); see also *Conner v. Burford*, 848 F.2d 1441, 1449–50 (9th Cir. 1988). Concurrent with courts' decisions discussing the dominance of the subsurface estate is a requirement that a holder of oil, gas or mineral rights adhere to the accommodation doctrine, which provides that a mineral owner or lessee may "use as much of the surface as reasonably necessary to extract and produce the minerals" as long as that use is reasonable. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248–49 (Tex. 2013).

Therefore, the government must be held to a reasonable set of regulatory management controls that does not unduly burden private oil, gas or mineral owners. For example, an excessive fee structure for access onto, or across, federally owned lands will negatively affect the value of the subsurface estate and the economic viability of development of that estate. The government must not develop regulatory management tools and fees that provide a regulatory avenue to develop in theory but which creates an economic firewall to development in reality.

It is important to note that expenses incurred in the development of oil, gas and minerals come in many forms. A monetary fee charged by the surface estate owner would be another such expense. All of the other costs incurred by the oil and gas developer as a result of requirements by the surface estate owner also should be taken into consideration when calculating a fair and reasonable fee structure. These other costs could include the cost and time of preparation of Environmental Impact Statements and reports unique to the Federal surface estate, rights-of-way fees for pipelines and roads, and lease maintenance and operational drilling and service costs associated with lengthy application processes.

The third basic tenet which NARO feel should be considered in this process is that the government may not unreasonably restrict oil and gas development to the point of requiring a "no net impact" on the environment as it seeks to mitigate surface impacts.

The National Environmental Policy Act (NEPA) "does not require agencies to elevate environmental concerns over other appropriate considerations." *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir. 2002). Instead, NEPA is a procedural statute and does not mandate particular results. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). As explained by the Interior Board of Land Appeals (IBLA), "NEPA does not bar actions which affect the environment, even adversely. Rather, the process assures that decisionmakers are fully apprised of likely effects of alternative courses of action so that selection of an action represents a fully informed decision." Biodiversity Conservation Alliance, 174 IBLA 1, 13–14 (2008) (citing the *Vermont Yankee* U.S. Supreme Court case).

As the IBLA observed in *Oregon Natural Resources Council*, NEPA does not direct that Federal agencies prohibit action even where environmental degradation is inevitable. 116 IBLA 355, 361 n.6 (1980). NEPA only mandates a full consideration of

the environmental impact of a proposed action before undertaking it. *Nat'l Wildlife Federation*, 169 IBLA 146, 164 (2006).

The government may not improperly elevate environmental concerns over other appropriate considerations or seek to create a set of regulations that restricts all environmental impacts on the subject lands. Any environmental NEPA analysis must also include the economic impacts to the orderly development of oil and gas within the forest. This includes a socioeconomic analysis that details the negative impacts any restrictions will have on state and private subsurface development and the impacts to local and state economies and taxes.

In conclusion, NARO wishes to emphasize that the government must:

- recognize the rights of the subsurface estates, and that such rights are dominant over the rights of the surface estate;
- allow economic and profitable access to, and development of, the subsurface estate;
- balance environmental concerns with the economic development of oil, gas and minerals; and
- avoid the costly taking that inevitably results from activists utilizing the agencies of the Federal Government to prevent or deny the development of our private mineral property without the "just compensation" that the U.S. Constitution guarantees.

Thank you for the opportunity to present the collective views of millions of private property oil, gas and mineral owners. If we may provide any additional information or be of service or assistance to the committee please let us know.

Mr. LAMBORN. Thank you.

The Chair now recognizes Mr. Casamassa to testify.

STATEMENT OF GLENN CASAMASSA, ASSOCIATION DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Mr. CASAMASSA. Mr. Chairman, Ranking Member Lowenthal, and members of the subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture regarding H.R. 3881, the Cooperative Management of Mineral Rights Act of 2015.

H.R. 3881 would repeal subsection (o) of section 17 of the Mineral Leasing Act, and Section 2508 of the Energy Policy Act of 1992. These provisions apply only to Federal lands within the Allegheny National Forest, for which the United States does not own the subsurface rights to oil and gas. These provisions provide general terms and conditions that must be followed before commencing surface-disturbing activities to develop oil and gas deposits.

The USDA believes the terms and conditions of the Mineral Leasing Act and the Energy Policy Act allow national forests to prudently manage surface resources, while ensuring the subsurface owners do not have unreasonable requirements to access their privately held mineral rights. We would like to continue to work with the sponsor to address issues of concern. However, we cannot support H.R. 3881.

This concludes my remarks. I would be happy to answer any questions. Thank you for the opportunity to testify.

[The prepared statement of Mr. Casamassa follows:]

PREPARED STATEMENT OF GLENN CASAMASSA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) regarding H.R. 3881, the Cooperative Management of Mineral Rights Act of 2015.

H.R. 3881 would repeal subsection (o) of section 17 of the Mineral Leasing Act (30 U.S.C. 226) and section 2508 of the Energy Policy Act of 1992 (P.L. 102–486; 106 Stat. 3108). These provisions apply only to Federal lands within the Allegheny National Forest for which the United States does not own the subsurface rights to oil and gas. These provisions provide general terms and conditions that must be followed before commencing surface-disturbing activities to develop oil and gas deposits.

The USDA believes the terms and conditions in the Mineral Leasing Act and in the Energy Policy Act allow national forests to prudently manage surface resources, while ensuring that subsurface owners do not have unreasonable requirements to access their privately held mineral rights. We would like to continue to work with the sponsor to address issues of concern, however we cannot support H.R. 3881.

This concludes my remarks. I would be happy to answer any questions. Thank you for the opportunity to testify.

Mr. LAMBORN. Thank you.

The Chair now recognizes Mr. Furnish to testify.

STATEMENT OF JIM FURNISH, FORMER DEPUTY CHIEF, U.S. FOREST SERVICE, WASHINGTON, DC

Mr. FURNISH. Good afternoon. I would like to just summarize where I am coming from on this. My view on this bill is that, although it is well intentioned, I view it as a misapplied fix.

I would note that the spark that ignited much of what is in contention here today was in 2007 during the George W. Bush administration lapsed over into the Obama administration, and was ultimately settled by the courts, which is their job.

To me, there is irony in the title of this bill, "Cooperative Management of Mineral Rights," when "cooperate" is defined as to work or act together, which is precisely what the energy industry and the Forest Service have been doing for decades. The past cooperation, which was a result of both litigation and enacted statute, provides 60 days notice to the land holder by the proponent in exercising their private mineral rights. And this process has served the public interest well by both allowing industry access to their private estate energy resources laying beneath public lands, while providing the Forest Service a brief but reasonable amount of time to discharge its stewardship responsibilities on behalf of the public.

You, no doubt, are aware that I firmly believe the 60-day notice requirement should remain in place. I am well aware that a few years ago the Forest Service did place a ban—excuse me, a hold, not a ban, it was a hold on processing drilling proposals in the belief, based on their legal counsel, that NEPA necessitated review and analysis. This went through the courts and the courts found otherwise. The Forest Service has been behaving in compliance with that outcome since.

I would also like to note that it is necessary to work through occasional obstacles where important values and interests are at stake on both sides. I think the emergence of the fracking industry—and it was noted that about half the wells on the Allegheny

have been subjected to fracking, much was unknown during the early part of the 21st century, much more is known now.

But in light of the questions surrounding this technology, the vast amounts of fluids used in drilling, as well as discharge from drilling, the important considerations of world-renowned black cherry resource, road access, water quality, recreation pursuits, all these things, there was a balancing of interest that the Forest Service was seeking to provide in the belief that they needed to approve of these, that this was "a Federal action." The courts found that this was not a Federal action, it was a private action. So the Forest Service has waived the imposition of NEPA.

Now they are actively cooperating within the 60 days to provide notices to proceed. Industry is, likewise, exercising their right to drill in a cooperative relationship with the landowner. I think this comes down to this question that I pose to you legislators: If drilling activities like cutting trees, disposing of well affluents, and building access roads and drill pads were occurring on private lands with no notice to the owners, do you think these private citizens might be upset? Might they come to you for help?

In your role as an elected official, would you demand that industry had no responsibility to provide notice, no responsibility to minimize drilling consequences, and no responsibility to address landowner concerns as to disposing of affluents, trees, road locations, drill pads, sites, all these kinds of things?

Public land, though managed by the Forest Service, is really no different, because it belongs to private citizens, including you, who have every reason to demand that the Forest Service do its very best to care for this land as a public trust. You now have in place a law that fosters effective cooperation so that industry and private citizens alike get a fair shake.

For the life of me, I cannot understand why you wish to rescind that law and short-change the interests of your citizen constituents. Thank you.

[The prepared statement of Mr. Furnish follows:]

PREPARED STATEMENT OF JAMES R. FURNISH, DEPUTY CHIEF, USDA FOREST SERVICE (RET.)

My name is Jim Furnish, and I am a consulting forester residing in Rockville, MD. I retired in 2002 from my position as Deputy Chief for National Forest Systems, USDA.

I appear today to offer my views on H.R. 3881, which intends to rescind statutory provisions of P.L. 102–468 (Oct. 24, 1992) that require companies proposing drilling operations on Allegheny National Forest to give 60-day advance notice to the Forest Service, including such information as the specific location and dimensions of their proposed activity.

There is irony in the title of H.R. 3881—"Cooperative Management of Mineral Rights"—when *cooperate* is defined as "*to work or act together*"; which is precisely what the energy industry and Forest Service have been doing for decades. The past cooperation—resulting from litigation and enacted statute to provide 60 days notice—has served the public interest well by allowing industry access to their private estate energy resources laying beneath public lands, while providing the Forest Service a brief but reasonable amount of time to discharge its stewardship responsibilities for public resources.

I firmly believe the 60-day notice requirement should remain in place. I am aware that a few years ago the FS placed a hold on processing drilling proposals in the belief that NEPA necessitated review and analysis. Courts found otherwise. It was also extremely difficult to process timely the hundreds of proposals during the energy activity boom a few years ago. But NEPA was found not to apply to these industrial actions, and the pace of development has once again slowed. It is

necessary to work through occasional obstacles where important values and interests are at stake on both sides.

The FS is now actively cooperating within the 60 days provided to issue Notices to Proceed. Industry is exercising their right to drill in a cooperative relationship with the landowner.

I pose this question to you legislators: if drilling activities like cutting trees, building access roads and drill pads were occurring on private lands with no notice to the owners, do you think these private citizens might be upset? Might they come to you for help? In your role as an elected official, would you demand that industry had *no responsibility* to provide notice, had *no responsibility* to minimize drilling consequences, and had *no responsibility* to address landowner concerns as to disposing of trees or road locations?

Public land, though managed by the FS, is really no different—because it belongs to private citizens, including you, who have every reason to demand that the FS do its best to care for the land. You now have in place a law that fosters effective *cooperation* so that industry and private citizens alike get a fair shake. For the life of me, I cannot understand why you wish to rescind that law and shortchange the interests of your citizen constituents.

Mr. LAMBORN. All right.

The Chair now recognizes Mr. Mayer to testify.

STATEMENT OF CRAIG MAYER, SECRETARY, PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION, WARREN, PENNSYLVANIA

Mr. MAYER. Thank you very much, Chairman Lamborn, Representative Thompson, and members of the committee. Thank you for inviting me to testify today. My testimony is being presented on behalf of the Pennsylvania Independent Oil and Gas Association of Pennsylvania.

Under the Weeks Act of 1911, sovereign states had first to consent to, by way of statutes, the acquisition of any lands whatsoever before any lands could be acquired for the purposes of national forest growing. Under Section 9 of the Weeks Act, before the United States could even purchase any surface lands that had been severed from oil and gas estates before the time the United States purchased itself, these are known as outstanding estates, it had to be found or certified that such estates, from their very nature, would in no manner interfere with the use of the land for the purposes of the Act. For reserved estates, those reserved at the time of the purchase from the seller himself or herself, the rules that were incorporated had to be expressed in and made a part of the deeds in order to be applied or effective.

Before proceeding further with my testimony, I did want to point out one point, which I think is important and helpful for the committee to know. One of the final acts in the events that would unfold in the 8 years of litigation and conflict between Northwest Pennsylvania's oil and gas producers and the Forest Service—pointedly, it was the Department of Justice in April 2014 awarding the Pennsylvania Independent Oil and Gas Association a half-a-million dollars, $530,000 exactly, in its legal fees and expenses in the Central Minard Run case, pursuant to a claim filed by the Equal Access to Justice Act. The Act authorizes the recovery of legal fees for an aggrieved party when the government is unable to show that its position in the litigation was substantially justified.

Beginning in 2006, the Forest Service departed from its decades-long cooperative relationship with private mineral owners and set upon a course of action designed to effectively seize control of the 483,000 acres of private mineral estates underlying the ANF. They went from a posture of cooperation—I was there—to a posture of coercion.

Included in its efforts was a 2009 sweetheart settlement agreement with environmental activists that was set aside by the Federal courts, the establishment—and I am not making this up—of an oil and gas strike team by the regional forester, and various administrative actions and rulemakings crafted to essentially strangle oil and gas development activity on the private estates in the ANF. Most of these initiatives were ultimately abandoned or suspended, as a result of PIOGA engaging with the Forest Service on these matters, as well as other parties. And in due course, fortunately, the Federal courts intervened to prevent the Forest Service from realizing its aims.

Getting to the precise questions today, I think that it is very important to the law in question that the language in 30 U.S.C. 226(o) about not construing what is there having anything to do with an effect on state authority is important. The language defers to state authority and sovereignty, just as the language in Section 9 of the Weeks Act does, and just as a requirement in the Weeks Act itself, that the sovereign states must consent to any acquisitions before they could occur at all.

In this regard, in 2008, the Pennsylvania General Assembly unanimously adopted resolutions reconfirming that the acquisition of the ANF under the Weeks Act did not and does not confer power on the United States to manage or regulate mineral estates that were in existence but were never purchased or condemned by the United States at the time of the acquisition. And the General Assembly also resolved that the imposition of any rules that would purport to manage or regulate reserved or outstanding estates, unless expressed in the deeds, would exceed the consent of the Commonwealth.

This principle of not recognizing or consenting to Federal jurisdiction over property rights that the Federal Government never acquired when it purchased the ANF was carried forward by the PA legislature 4 years later when it passed Act 13 of 2013, which is a comprehensive overhaul of the oil and gas regulations that is now in effect that covers every aspect of oil and gas development on the ANF and elsewhere in Pennsylvania. That provision reaffirmed that it was Pennsylvania laws and statutes that would apply to the reserved and outstanding estates in the ANF, and only those statutes.

Also in the Minard Run four decisions—there were five decisions in the history of that name in cases—Judge McLaughlin dismissed on the merits the argument that the Forest Service possessed broad regulatory authority as a result of Pennsylvania's 1911 consent statute, which authorized the acquisition to begin with. In so doing, he noted that the Pennsylvania Act contains no language authorizing the Federal Government to pass regulatory laws concerning unacquired mineral estates.

In closing, the Federal court rulings in the Minard Run line of cases, as well as action by the Pennsylvania legislature, have really resulted in subsection (o) becoming moot and superfluous. There is some confusion here with respect to what is, in fact, in effect as the law. There is no question that notice is absolutely required, has been required, and is continually given by any oil and gas producer since the 1980 decision in what was called Minard Run I. The repeal of this statute would in no fashion diminish the requirement for notice.

Mr. LAMBORN. Mr. Mayer, we are going to have to ask you to finish.

Mr. MAYER. Thank you.

[The prepared statement of Mr. Mayer follows:]

PREPARED STATEMENT OF CRAIG L. MAYER, ESQ., SECRETARY, PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION, WARREN, PENNSYLVANIA

Since 2008 I have served as Secretary of the Pennsylvania Independent Oil & Gas Association ("PIOGA") and Chairman of PIOGA's Allegheny National Forest (ANF) Committee. PIOGA is a nonprofit trade association headquartered in Wexford, Pennsylvania just north of Pittsburgh. It is comprised of over 700 members, including oil and natural gas producers engaged in development and production from both conventional and unconventional formations in Pennsylvania, as well as drilling contractors, service companies, manufacturers, distributors, professional firms and consultants, pipelines, end users and royalty owners with interests in the success of Pennsylvania's oil and natural gas industry. Many of our members own subsurface acreage and are involved in exploration and production activities on private oil and gas estates within the Allegheny National Forest. I am offering testimony today in support of H.R. 3881 on behalf of our association.

By way of background, from 2004 until 2014, I was a Vice-President and General Counsel for Pennsylvania General Energy Company L.L.C. ("PGE"), which is headquartered in Warren, Pennsylvania. Since 2014, in a part-time capacity, I have been PGE's Vice-President for Government Relations. I am a retired U.S. Marine Corps officer having served on active duty from 1968 to 1992. I obtained a Juris Doctor degree from Duquesne University Law School in 1974 and am a 1968 graduate of the Pennsylvania State University.

The ANF encompasses approximately 513,000 acres which cover major parts of four counties in Northwestern Pennsylvania, i.e., Elk, Forest, Warren, and McKean Counties. Notably, 93 percent of the ANF lands or about 483,000 acres are underlain by private severed oil and gas mineral estates. When the ANF surface lands were acquired by the Federal Government in the 1920s and 1930s, the Forest Service purposely did not acquire the private oil and gas estates. In fact, under Section 9 of the 1911 Weeks Act, 16 U.S.C. §518, before the United States could even purchase surface lands that had been severed from oil and gas estates before the time of the United States purchase, both the Secretary of Agriculture and the National Forest Reservation Commission had to find that such estates "from their nature" would "in no manner interfere" with the use of the land for the purposes of the Act. The Forest Service viewed oil and gas production as not in conflict with forestry management purposes, and that view continued until 2006.

The ANF region is the birthplace of the oil and gas industry in Pennsylvania, the United States, and the world. The first oil well in the world, the Drake Well, was drilled in 1859, about 15 miles from the current southwestern ANF boundary. Oil and gas production has occurred in this region for well over a century, including on the ANF lands. It is a vital part of the culture of the communities in the region and our economic base. For example, PIOGA estimates that annually 25 to 35 percent of the oil produced in Pennsylvania comes from estates within the ANF. There are approximately 60 producers and, at least, an equal number of direct supporting businesses who rely on natural resource development within the ANF. Only a handful of the producers are large companies with the vast majority being composed of individuals, families, and small companies. Traditionally, the U.S. Forest Service respected multiple use of the ANF and cooperated with oil and gas producers. This all changed beginning in 2006 and particularly so in early 2009.

Beginning in 2006 the U.S. Forest Service departed from its decades-long cooperative relationship with private mineral owners and set upon a course of action designed to effectively seize control of the 483,000 acres of private mineral estates that

they owned. Included in its various efforts was a 2009 "sweetheart" settlement agreement with environmental activists that was set-aside by the Federal courts as well as various administrative actions and rulemakings crafted to strangle oil and gas development activity on private estates underlying the ANF and other national forest lands. PIOGA engaged the Forest Service on these and other fronts. In due course the Federal Courts intervened to stop the Forest Service from realizing its aims.

The story of Northwest Pennsylvania's oil and gas industry 9-year engagement with the Forest Service is told in the attached 77 page article that was presented at the Proceedings of the Thirty Sixth Annual Energy and Mineral Law Institute of the Energy and Mineral Law Foundation in June 2015. It chronicles key events and provides, in my considered opinion, more than ample reason for supporting and adopting H.R. 3881. Federal court rulings in the Minard Run line of cases as well as actions by the Pennsylvania legislature which result in a barring of any Federal regulation by way of subsection (o) are discussed in the attached article at pages 271 and 272. In short, these actions have rendered subsection (o) of section 17 of the Mineral Leasing Act (30 U.S.C. 226) moot and superfluous. Moreover, its prescribed terms are already implemented by way of the Minard Run judicial decisions and the common law.

On behalf of PIOGA I thank the members of the committee here today for your interest and help on these issues which are of vital importance to Northwestern Pennsylvania, and many other regions of our Nation.

*****

The following document was submitted as a supplement to Mr. Mayer's testimony. This document is part of the hearing record and is being retained in the Committee's official files:

—A Study in the Abuse of Power: The United States Forest Service's Illegal Efforts to Seize Control of Mineral Estates Underlying the Allegheny National Forest, 36 Energy & Min. L. Inst. 244 (2015)

Mr. LAMBORN. All right, thank you. We will go on with our questions now.

I thank the panel for their testimony, I thank you all for being here. Reminding the Members that Committee Rule 3(d) imposes a 5-minute limit on questions, the Chair will now recognize Members for any questions they may wish to ask the witnesses. I will begin with myself, then the Ranking Member, and so on.

This first question will be for Mr. Mayer and Mr. Cline. Our Nation's shale gas revolution changed the world while lowering prices here at home.

[Chart]

Mr. LAMBORN. As you can see on the chart on the screen, it has allowed American families, manufacturers, and other businesses to enjoy low energy prices and to flourish. A report issued by the Congressional Budget Office in December 2014 pointed out that if shale gas did not exist, the price of natural gas would be about 70 percent higher than currently projected by 2040, and that shale gas development has boosted our gross domestic product—that increase has been so large that if it came from a separate country, it would now be the world's third-largest natural gas supplier.

However, there are some even here in Congress who would campaign, and who are campaigning for President, who want to stop this production dead in its tracks. What if they did stop this production, and what would have happened to the shale gas revolution if the policies that we are talking about on the part of the Forest Service had been used by other agencies around the country before the shale gas revolution even took place?

Once again, Mr. Mayer or Mr. Cline?

Mr. MAYER. Let me just respond by saying that this provision did not figure centrally in the litigation until about 2008, when it was cited in a rulemaking initiative as one of the basics for a comprehensive rulemaking wherein the Forest Service was going to apply a whole series of rules to the non-Federal mineral estates, private estates throughout the country, to include the ANF.

So, it was not just limited to the ANF, it was cited as authority to expand it beyond the ANF.

Mr. LAMBORN. Mr. Cline?

Mr. CLINE. If they put a ban on fracking, I read a study the other day that in 5 years we would go through 45 percent of our reserves. And if this would have happened back in the 1980s, and the shale gas would have never taken off, we would not have a whole lot of gas in this country right now, and the price would be sky high.

Mr. LAMBORN. OK, thank you. Now I have a question for Mr. Shuffstall and Mr. Cline.

It is important to point out that sometimes even the mere threat of Federal regulation has very serious impacts on state and local economies, can be a powerful market force, and sometimes will even have impacts on a national or global scale. One example is President Obama's Clean Power Plan that the Supreme Court has put on hold. Implementation has been halted. Yet even if the courts strike it down, the very serious impacts of the rule are lasting, especially for the thousands of Americans who will be out of a job due to several coal companies having been driven into bankruptcy.

So my question is this: Even though private mineral rights owners won in court in this particular instance, how did the proposed regulations by the U.S. Forest Service impact your friends and neighbors and local economy, and would you say that there are even still some lasting consequences?

Mr. SHUFFSTALL. Certainly, there have been. There has been a chilling effect. If you are familiar with Bradford, there is a refinery there that depends on a particular kind of crude oil that is only produced in the region. You do not just refine any crude oil at a particular refinery, it requires a certain grade. This is Pennsylvania Grade Crude Oil, and the entire local economy is dependent to a certain degree on the production of Pennsylvania Grade Crude, much of which comes from the ANF and other areas of the region.

And the idea of the uncertainty for the last 10, 15 years of whether or not that would continue has had a definite chilling effect on the local economy. And it is not just limited to Bradford. I would say the entire oil-producing region of Northwest Pennsylvania.

Mr. LAMBORN. Thank you. Mr. Cline?

Mr. CLINE. Yes, I would agree with what he says. The uncertainty of Federal regulations, along with what we are going through with the state, it makes everybody cautious about doing anything, going ahead in the future. It makes you wonder whether we are going to be in business much longer if we have any more regulations.

They are killing the business, and it has had a great effect around Bradford. Anywhere in Northwestern Pennsylvania—out of

the 26,000 people that are employed directly by conventional oil and gas, I would say there are probably only about 6,000 of them working right now. Everybody is laid off or companies are going bankrupt.

Mr. LAMBORN. OK, thank you. The Chair now recognizes the Ranking Member for any questions he might have.

Dr. LOWENTHAL. Thank you, Mr. Chair. You know, I am trying to get my arms around—as I mentioned in my statement—the need for the bill. And let me follow my thinking.

In the 1980s, the Forest Service sued a mineral owner for converting or constructing roads without at least alerting the Forest Service. The district court agreed that, at that time, this company had to provide the Forest Service with additional information, and things were moving along at that time. Then, through 1992 we had amendments to the Mineral Leasing Act, and that the U.S. Forest Service would issue a notice to proceed, that they received this and they needed at least a 60-day notice for this before proceeding.

Then came an attorney for the Forest Service in 2007 who said that maybe this notice to proceed was a major Federal action, although the Forest Service didn't do anything about that, whether that would trigger anything. Environmental groups then sued and there was an agreement that was made between the Forest Service and that—potentially that there might have to be some kind of environmental NEPA review, or some kind of review.

The courts, in 2011, found in favor of the oil companies, that the notice to proceed is not a major Federal action, it is not a permit, and that the Forest Service has no discretion to prohibit access to mineral rights. But it also said in that that it reaffirmed that the Forest Service is entitled to advance notice from mineral rights owners before operation. So that is what the court said—Federal action is not needed, except that there still needs to be this 60-day notice to go forward. So, given that, instead of this bill just getting rid of the parts that they find in that 1992 Mineral Leasing Act as onerous, they threw out the 60-day notice also.

My question is, why not just keep the 60-day—why not a statement that just says it limits the Forest Service's authority to just the 60-day notice? Why, since the courts have said that is not only permissible, but that it should be there, it reaffirmed the Forest Service, why are we going through this thing to eliminate the entire section? Why not just say nothing in this—the Forest Service is limited to just having that 60-day notice, that has to be there?

That would get us off this question about intent and anything else that is going on, that potentially new regulations could come up, and so forth. The courts have decided that, but they also have reaffirmed the need.

Don't you think that this is an over-reach—I am asking all the members of the panel—by also throwing out the 60-day notice?

Mr. MAYER. Sir, the 60-day notice is not being thrown out by any——

Dr. LOWENTHAL. Tell me where it is not being thrown out.

Mr. MAYER. The 60-day notice was established by the Federal District Court in 1980 and is in full force and effect today, and has been in full force and effect since the date of that ruling. The only

thing the 1992 Act did was simply put that into the statute itself. The 1992 Act is, if you will, the vestigial organ that needs to——

Dr. LOWENTHAL. But by limiting this and throwing out that statement, couldn't it be perceived that it was the intent of the Congress to eliminate the 60-day notice, too?

Mr. MAYER. Not at all. The Federal district decision remains in full force and effect. It was an interpretation of Pennsylvania law, and it applies completely on the Allegheny National Forest and the state of Pennsylvania——

Dr. LOWENTHAL. This wouldn't be an attempt of Congress to overturn that decision?

Mr. MAYER. Absolutely not, sir. Absolutely not. And I am 100 percent assured of that statement. Absolutely not.

Dr. LOWENTHAL. I wonder what others think.

Mr. FURNISH. I guess I would ask him if he is an attorney.

Mr. MAYER. I am.

Mr. FURNISH. Is he a legislator? Because I interpret this H.R. 3881 very differently.

Dr. LOWENTHAL. And how do you interpret it?

Mr. FURNISH. Well, I interpret it to rescind the 1992 Act, which provided for 60-day notice.

Dr. LOWENTHAL. That is what I——

Mr. FURNISH. It was codified in law. Now it is being rescinded from law.

Dr. LOWENTHAL. I am just not sure why we are going down this route when, in fact, everyone agrees that the 60-day notice is appropriate, why we are even entertaining that.

Mr. SHUFFSTALL. If I may, there are two issues: one, private property rights, and the rights of the Federal Government as an owner of the surface vis à vis the owner of the subsurface. And a 60-day accommodation rule is a very good rule, and it is one that the industry tends to follow when it is engaged not only with the Federal Government, but also private citizens, many of whom are friends, neighbors, relatives, and customers of the bank.

The second question, though, is the action of the Federal Government as a regulatory action that impinges or infringes on private property rights to the point where it could be considered a taking. And to me, that is the fundamental difference. Do you require legislation for a communication regarding relative accommodation of property rights, surface versus subsurface, or do you engage in regulation? And at what point does that regulation become a taking?

Dr. LOWENTHAL. But——

Mr. MAYER. Could I just add briefly? The——

Mr. LAMBORN. No, I am afraid the time is up.

Mr. MAYER. OK.

Mr. LAMBORN. The Chair now recognizes the sponsor of the bill, the Representative from Pennsylvania, Mr. Thompson.

Mr. THOMPSON. Thank you, and thank you to the Ranking Member for his questions, too. That is appreciated, because I think it is important to flush that out. You heard from an attorney. How about you hear it from a law maker, the author?

If I wanted to specifically go after that 60 days, I would have referenced specifically that 1980 court order in terms of 60 days. I think the 60 days is within the confines of the whole reasonable

access process, in terms of that interaction between the subsurface right owners and the surface owners.

So my questions—I want to talk about—well, there are just so many things to talk about here, so let me be selective.

Mr. Cline, can you estimate how much money it costs to sue the Federal Government to litigate this issue in the courts and prove that the families and businesses of Northwestern Pennsylvania were on the right side of the law?

Mr. CLINE. I don't know the exact figure, just what Mr. Mayer threw out, about $4 million.

Mr. THOMPSON. Would you agree that is the ballpark?

Mr. MAYER. That would be my estimate, having been involved in tracking many of the expenses, that about $4 million—there were 7 cases, ultimately, that were filed in——

Mr. THOMPSON. Mr. Casamassa, thank you for your service with the Forest Service. I am a fan of the Forest Service. We work together, as Chair of the Conservation and Forestry Subcommittee for the Committee on Agriculture.

How much did defending this regulatory over-reach by the Forest Service in all those cases that were just referenced cost the American taxpayer in staff time and additional budgetary needs, the Equal Access to Justice—I think there was a payment that was promised to the environmental groups—I don't know if that ever occurred—on the industry side. Do you know what the total bill of that was? If it was $4 million for the plaintiffs, what was it for the defendants, the American taxpayers?

Mr. CASAMASSA. Congressman, I don't necessarily have those figures to determine the total cost associated with the litigation.

Mr. THOMPSON. If you could work and get that number for me specifically, but I have to wonder—I mean reasonable minds would say if for one party it was about $4 million, I have to think for the other party it was about $4 million. And we have a few more attorneys we use when it is the government, with the Justice Department and those assets and resources.

So my question—let's just say it is $4 million. Let's be fair and say it was $3 million. When it comes to—we spend a lot of time talking about wildfires, and how we prevent wildfires, and how do we make forests more healthy. What could we do on the issue of wildfires with an additional $3 million on a particular forest?

Mr. CASAMASSA. Well, I certainly think, depending on where you are, there could be——

Mr. THOMPSON. You can do a lot of restorative work, right?

Mr. CASAMASSA. I mean activity——

Mr. THOMPSON. The understory and——

Mr. CASAMASSA. Yes.

Mr. THOMPSON. I was just in Washington State with one of the members of my subcommittee that serves on this committee as well. And they lost a half-a-million acres. Not all that was Federal; some was state and some was private. But to continue to appeal this in the past—and I am looking in the past, retroactively. That is why this legislation is important, because we are actually just trying to codify what the courts have found.

So, my follow-up question to you, Mr. Casamassa, is in light of the recent court decisions supporting private property, subsurface

mineral owners, can you assure this committee that the Forest Service will not promulgate any new rules regulating privately held mineral rights or agree to any new settlements similar to the 2009 agreement in the ANF, or engage in—co-join with another—some environmental groups that, once again, spend millions of taxpayer dollars for something that has already been repeatedly codified by the courts.

Mr. CASAMASSA. Well, Congressman, the Forest Service has no intention to move forward with anything like that in our regulatory agenda, when it comes to codifying or proposing any rules.

Mr. THOMPSON. So, the Forest Service position—not on this piece of legislation, I will get back to that—but on what we are talking about, the Forest Service position on what has been codified by the courts, the Forest Service is in complete agreement with what the courts have determined?

Mr. CASAMASSA. We presently manage the subsurface rights of individuals and companies on the Allegheny as it relates to the court ruling, the existing policy, and the 1992——

Mr. THOMPSON. So what you are saying, representing the Forest Service today, being the official spokesperson, so you are saying that what has been codified—the Forest Service is in agreement with what the courts have codified——

Mr. CASAMASSA. That is how we——

Mr. THOMPSON [continuing]. I am sorry, I used the word "codified," wrong process. What the courts have ruled.

Mr. CASAMASSA. Presently, that is how we are managing the subsurface activity on the Allegheny.

Mr. THOMPSON. If the Forest Service is in agreement with what the courts have found, why is the Forest Service opposing just providing clarity, so that the agency does not find itself—that has economic or political motivations or whatever are being sucked into a future lawsuit?

Why wouldn't the Forest Service—you tell me you actually agree with the intent of what this legislation does, but I don't understand why you are opposing the bill today.

Mr. CASAMASSA. Well, again, I go back to, based on the existing framework of the court ruling, our policy, as well as the 1992 Energy Policy Act, that is the frame by which we are managing the subsurface——

Mr. THOMPSON. That you have never actually really used. It was, like, 16 years to get promulgated regulations on that. So this is not something that you have actually used. The whole 60-day notice thing, which I think is reasonable, actually predates the 1992 Act back to 1980.

Sorry, Mr. Chairman.

Mr. LAMBORN. OK. This is a good discussion. We will now turn to Representative Hice for any questions he may have.

Dr. HICE. Thank you, Mr. Chairman, and I appreciate each of you for joining us today.

Mr. Mayer and Mr. Cline, the Forest Service manual states that Secretary's rules and regulations do not apply to the administration of outstanding rights. So, with that being said, it appears to me, at least, that the Forest Service attempt to apply NEPA to private mineral rights in the Allegheny National Forest is not only a

violation of state and Federal law, but even a violation of their own policy. Would you agree with that?

Mr. CLINE. Yes, I would agree with that.

Mr. MAYER. Mr. Hice, that was, I think, one of the reasons the Department of Justice awarded PIOGA the funds under the Equal Access to Justice Act. And commentators on the case have noticed that very fact, that the policies and positions of the Forest Service taken on the Allegheny in the case beginning back in 2006 departed from their very own policies and rules, which was even more surprising, certainly to us, when that occurred.

Dr. HICE. So, is it your opinion that the Forest Service staff was aware of this when drafting the regulations that led to the ban on oil and gas leasing in the Allegheny?

Mr. MAYER. Based upon my experience, I am certain they were aware of what the various policy statements were. They were reminded continually by us in the oil and gas industry in different venues and in different forums. And then, as Congressman Lowenthal mentioned, there was a legal opinion that came into play back in 2007——

Dr. HICE. Let me keep going with this thought, and I appreciate your answer.

Mr. Cline, do you have anything to add?

Mr. CLINE. Just that being a private business owner—most of us know that any time a government agency or a state agency—they are always trying to over-reach their authority any way that they can do something to force it on you.

Dr. HICE. So, do you believe that employees at the Forest Service purposely ignored their operating manual?

Mr. CLINE. Yes.

Dr. HICE. OK. Mr. Mayer?

Mr. MAYER. I would say they took great liberties with their interpretation.

Dr. HICE. Is this, in both of your opinions, a rogue behavior of a single occurrence, or is this symptomatic of a larger problem?

Mr. MAYER. In my view, I would have a hard time describing it as rogue, simply because it went from the Allegheny through the regional office and into the Washington office, in terms of the policies that were being pursued with respect to the Allegheny in this particular litigation.

Dr. HICE. OK. Mr. Cline?

Mr. MAYER. I find that unusual, but nonetheless——

Mr. CLINE. I agree with what he says.

Dr. HICE. All right. So, this is symptomatic of a larger problem, right?

Mr. Casamassa, your response?

Mr. CASAMASSA. Certainly, presently in the regulatory framework that we work right now, if there is the potential for some kind of regulation or proposed regulation, those go out for public comment and notification. All of that, the content of those comments, are then brought back to the agency. We then distill that down to the significant points, maybe take a look at that, and then actually frame out a final regulation.

It is done in a very transparent way right now, and——

Dr. HICE. All right. Let me interrupt you, if I can, because I have a couple other questions for you. But you are not answering the issue of ignoring your own policy, and that is what is at stake here.

Let me ask you this. Roughly how much money has all the litigation tied to regulating private mineral estate in Allegheny cost the American taxpayer since 2007?

Mr. CASAMASSA. Congressman, that is the question that the Congressman from Pennsylvania had asked me, Congressman Thompson. At this juncture, I don't have those figures, but I would certainly be willing to go back and roll that up and provide it to the Subcommittee Chair.

Dr. HICE. OK. I would appreciate that greatly.

Chairman, I see my time is running out, but I thank you, and I yield back.

Mr. LAMBORN. OK. Thank you. I want to thank the witnesses for their valuable testimony and the Members for their questions.

The members of the committee may have some additional questions for the witnesses, and I guess a couple have already been asked during the course of questions. I would ask that you respond to those in writing.

Under Committee Rule 4(h), the hearing record will be held open for 10 business days for these responses. If there is no further business, without objection the committee stands adjourned.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

April 29, 2016

House Committee on Natural Resources,
Subcommittee on Energy and Mineral Resources,
1324 Longworth House Office Building,
Washington, DC 20515.

Dear Subcommittee Members:

The undersigned organizations oppose H.R. 3881, the ill-conceived and misleadingly titled "Cooperative Management of Mineral Rights Act of 2015." If passed, H.R. 3881 would strip the Department of Agriculture of important rule-making authority and make it easier for oil and gas companies to drill in the Allegheny National Forest, Pennsylvania's only national forest. In fact, H.R. 3881 would make it so that certain mineral owners could start drilling in the Allegheny National Forest without even notifying the federal landowner, the U.S. Forest Service. Such a result would threaten vast areas of the Allegheny National Forest that are important for protecting watersheds, wildlife habitat, and public recreation.

Specifically, H.R. 3881 would amend the Mineral Leasing Act to repeal 30 U.S.C. § 226(o). This statute requires the owners of "outstanding" mineral rights in the Allegheny National Forest to provide the Forest Service with at least 60 days' notice before engaging in any earth-disturbing activities related to oil and gas drilling.[1] This notice must include, at a minimum: (1) a designated field representative; (2) a map showing the location and dimensions of proposed well sites, roads and pipelines; (3) a plan of operations setting forth a schedule for construction and drilling; (4) a plan to control erosion and sedimentation; and (5) proof of mineral ownership.[2]

These common-sense provisions, which are in no manner burdensome on the oil and gas industry, grew out of the U.S. District Court's opinion in *United States v. Minard Run Oil Company*.[3] In that case, the Forest Service sued Minard Run Oil Company after the company cut trees in the Allegheny National Forest to construct

[1] *See* 30 U.S.C. § 226(o)(2).
[2] *Id.* § 226(o)(3).
[3] 1980 U.S. Dist. LEXIS 9570 (W.D. Pa. 1980) ("*Minard Run I*").

roads, pipelines and well sites "without notice and without cooperative planning" with the Forest Service.[4] The court noted that Minard Run's actions caused "devastation" and "irreparable damage to the surface of the land occupied by the Allegheny National Forest."[5]

The court stated that "a mineral operator cannot presume to be capable of adjudging without reasonable advance notice to the surface owner and therefore, unilaterally, that his operations will not unnecessarily impair the use of the surface."[6] The court specifically highlighted the need for oil and gas companies to provide advance notice when the surface owner holds the lands in trust for the American people:

> The public has a substantial interest in reasonable advance notice being afforded for the reason that no natural resources of value to the public should be compromised unnecessarily in the process of obtaining another natural resource. The public has an added interest here, given that the natural resources owned by [the Forest Service] ***are held specifically in trust for the public*** . . . The public has an interest in preservation of the Allegheny National Forest as a part of preservation of environmental resources and our abundant forest areas and so the public benefit is to this extent involved in the rights of the [Forest Service] considering the use to which the land has been put . . . The interest of the public lies in the preservation of valuable natural resources on the surface of lands from unnecessary impairment in the course of development of a mineral resource.[7]

Eliminating the notice requirements in 30 U.S.C. § 226(o), as H.R. 3881 would do, will not promote "cooperative management of mineral rights" in the Allegheny National Forest. Rather, it will trample federal safeguards for managing public natural resources that have been in place for nearly forty years. This will only embolden oil and gas companies to be ***less*** cooperative, as they were before the court's opinion in *Minard Run I*.

To advance H.R. 3881, its proponents have severely mischaracterized recent litigation regarding the Forest Service's authority to regulate the exercise of private mineral rights in the Allegheny National Forest.[8] In that litigation, the U.S. District Court for the Western District of Pennsylvania enjoined the Forest Service from requiring preparation of an environmental analysis under the National Environmental Policy Act before mineral owners could exercise their mineral rights because, according to the court, "the Forest Service does not possess the regulatory authority that it asserts relative to the processing of oil and gas drilling proposals."[9] The proponents of H.R. 3881 erroneously claim that "[t]hroughout this litigation, the ***sole authority*** claimed by the Forest Service and environmental groups for promulgation of regulations to exercise regulatory authority over private mineral estate[s] was . . . 30 U.S.C. § 226(o)."[10] In doing so, the proponents of H.R. 3881 imply that the most recent *Minard Run* litigation nullified 30 U.S.C. § 226(o), which they refer to as an "antiquated statute."[11] This is emphatically untrue.

Indeed, the District Court's 2009 preliminary injunction opinion was limited to interpreting whether the Forest Service's authority under an entirely different statute, the Organic Act (16 U.S.C. § 551), applied to the exercise of private mineral rights in the Allegheny National Forest.[12] While the court stated that the Forest Service lacked authority to regulate under 16 U.S.C. § 551, the court nevertheless affirmed the applicability of "the procedures set forth in [*Minard Run I*] ***and*** 30 U.S.C. § 226(o)."[13] The Third Circuit affirmed this holding.[14]

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[4] *See Minard Run I*, 1980 U.S. Dist. LEXIS 9570, at *9, *16.
[5] *Id.* at *1, *16.
[6] *Id.* at *20.
[7] *Id.* at *11, *16, *20 (emphasis added).
[8] *See e.g.*, Subcommittee on Energy and Mineral Resources, Hearing Memorandum, pp. 3–4 (Apr. 18, 2016) ("Hearing Memo"), *available at* http://naturalresources.house.gov/uploadedfiles/hearing_memo_-_leg_hrg_on_hr_3881_04.19.16.pdf.
[9] *Minard Run Oil Co. v. U.S. Forest Service*, 2009 WL 4937785, *31 (W.D. Pa. 2009) ("*Minard Run II*"), *aff'd* 670 F.3d 236 (3rd Cir. 2011) ("*Minard Run III*").
[10] Hearing Memo, pp. 3–4 (emphasis added).
[11] *Id.* at 4.
[12] *See Minard Run II*, 2009 WL 4937785, *28–*31.
[13] *Id.* at *34 (emphasis added). Note: the undersigned organizations disagree with both the District Court and Third Circuit opinions regarding the Forest Service's purported lack of authority to regulate the exercise of private mineral rights pursuant to 16 U.S.C. § 551.
[14] *See Minard Run III*, 670 F.3d at 244, 254 (citing 30 U.S.C. § 226(o) and stating the Forest Service "is ***entitled to notice*** from owners of these mineral rights ***prior to surface disturbance***[.]" (emphasis added))

During the merits stage of the *Minard Run* litigation, the District Court reiterated the applicability and importance of the notice provisions contained in *Minard Run I* and codifIed in 30 U.S.C. § 226(o):

> As has been recognized by all parties, my previous opinion reaffirmed what I referred to as the "*Minard Run [I]* approach," which included a 60-day notice requirement derived from the holding in the prior *Minard Run [I]* case. ***However, my order did not, and was not intended to, grant the drillers carte blanche to enter the ANF and commence drilling operations on the 61st day if unable to reach an accommodation with the Forest Service*** . . . Depending upon the unique circumstances of any given case, ***a period of time longer than 60 days may be entirely appropriate and necessary*** in order for the dominant and servient estateholders to engage in a meaningful and cooperative accommodative effort.[15]

Contrary to the proponents of H.R. 3881, both the District Court and the Third Circuit unequivocally affirmed the applicability of 30 U.S.C. § 226(o). Thus, this statute is not "antiquated"—rather, it is an important part of the Forest Service's statutory authority to protect the Allegheny National Forest from "unnecessary impairment in the course of development of a mineral resource."[16]

Finally, it is important to note that the ramifications of repealing 30 U.S.C. § 226(o) would likely be felt far beyond the boundaries of the Allegheny National Forest. For example, the Forest Service Manual ("FSM") incorporates provisions quite similar to 30 U.S.C. § 226(o).[17] These provisions apply to the administration of outstanding mineral rights in ***all*** national forests, not just the Allegheny. Therefore, repealing 30 U.S.C. § 226(o) would likely be just the opening salvo of a broader push by industry to curtail regulation of oil and gas drilling on National Forest System lands throughout the nation.

We urge members of the Subcommittee to vote "no" on H.R. 3881.

Sincerely,

Ryan Talbott, Executive Director
Allegheny Defense Project

Joe Lovett, Executive Director
Appalachian Mountain Advocates

Tierra R. Curry, Senior Scientist
Center for Biological Diversity

Denise Boggs Executive Director
Conservation Congress

Gary Macfarlane, Ecosys. Def. Dir.
Friends of the Clearwater

Tabitha Tripp, Co-President
Heartwood

Amy Mall, Senior Policy Analyst
Natural Resources Defense Council

Janet Keating, Executive Director
Ohio Valley Environmental Coalition

Jenny Lisak, Co-Director
Pennsylvania Alliance for Clean Water and Air

Lori Andresen, President
Save Our Sky Blue Waters

Laurie Barr, Co-Founder
Save Our Streams PA Inc.

Lena Moffitt, Director
Beyond Dirty Fuels, Sierra Club

Thomas Au, Conservation Chair
Sierra Club Pennsylvania Chapter

Misty Boos, Director
Wild Virginia

○

[15] *Minard Run Oil Co. v. U.S. Forest Service*, 894 F.Supp.2d 642, 647 (W.D. Pa. 2012) ("*Minard Run IV*") (emphasis added).
[16] *Minard Run I*, 1980 U.S. Dist. LEXIS 9570, *20.
[17] *See* FSM 2832.